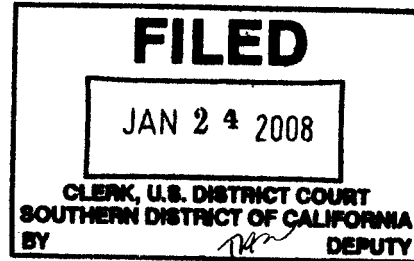


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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ8010
12 Plaintiff,)
13 v.) **STIPULATION OF FACT AND JOINT**
14 XAVIER HUMBERTO LOPEZ-BORREGO,) **MOTION FOR RELEASE OF**
15 Defendant.) **MATERIAL WITNESS(ES) AND**
16) **ORDER THEREON**
(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
19 Caroline P. Han, Assistant United States Attorney, and defendant XAVIER HUMBERTO LOPEZ-
20 BORREGO, by and through and with the advice and consent of defense counsel, Frank M. Murphy,
21 that.

22 I. Defendant agrees to execute this stipulation on or before the first preliminary hearing
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
24 intelligently and voluntarily entered into it. Defendant agrees further to indictment and plead guilty
25 to the pre-indictment information charging defendant with a non-mandatory minimum count of
26 Harboring Illegal Aliens and Aiding and Abetting, in violation of Title 8, U.S.C., Secs. 1324(a)(1)(A)(iii)
27 and (v)(II) (Felony)

28 //

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2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **February 8, 2008**.

4. The material witness, Salvador Pineda-Ramirez, in this case:

a. Is an alien with no lawful right to enter or remain in the United States;

b. Entered or attempted to enter the United States illegally on or about January 7, 2008;

c. Was found in a house which defendant was the caretaker and that defendant knew or acted in reckless disregard of the fact that he was alien with no lawful right to enter or remain in the United States;

d. Was paying \$2,500 to others to be brought into the United States illegally and/or transported illegally to his destination therein; and,

e. May be released and remanded immediately to the Department of Homeland Security for return to his country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Xavier Humberto Lopez-Borrego

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 3 waives the right to confront and cross-examine the material witness(es) in this case.

4 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 6 further that defendant has discussed the terms of this stipulation and joint motion with defense
 7 counsel and fully understands its meaning and effect.

8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 9 immediate release and remand of the above-named material witness(es) to the Department of
 10 Homeland Security for return to his country of origin.

11 It is STIPULATED AND AGREED this date.


12 Respectfully submitted,

13 KAREN P. HEWITT
 14 United States Attorney

15 Dated: 1/24/08

16 
 17 CAROLINE P. HAN
 18 Assistant United States Attorney

19 Dated: 1/21/08

20 
 21 FRANK M. MURPHY
 22 Defense Counsel for Xavier Humberto Lopez-Borrego

23 Dated: 1/21/08

24 
 25 XAVIER HUMBERTO LOPEZ-BORREGO
 26 Defendant

27
 28 Stipulation of Fact and Joint Motion for Release of
 Material Witness(es) And Order Thereon in
 United States v. Xavier Humberto Lopez-Borrego

ORDER

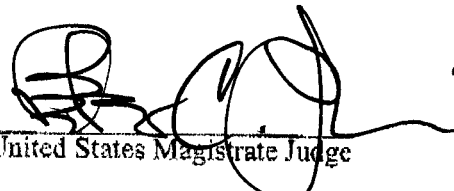
Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to his country of origin.

SO ORDERED.

Dated: 1-24-08


United States Magistrate Judge